

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Meg Forney,

Complainant,

vs.

Brad Bourn,

Respondent.

SECOND
NOTICE OF AND ORDER FOR
PREHEARING CONFERENCE AND
EVIDENTIARY HEARING

TO: The Parties.

On November 6, 2009, Meg Forney filed a Complaint with the Office of Administrative Hearings alleging that Brad Bourn violated Minn. Stat. §§ 211B.02 (false endorsement) and 211B.06 (false campaign material) in connection with his campaign for the Minneapolis Park and Recreation Board District 6 Commissioner seat. Administrative Law Judge Barbara L. Neilson reviewed the Complaint and, by Order dated November 10, 2009, determined that the Complaint sets forth a *prima facie* violation of Minnesota Statutes § 211B.02.

By Order dated November 20, 2009, this matter was scheduled for a prehearing conference to be held on December 11, 2009, and an evidentiary hearing on January 6, 2010 at 9:30 a.m. By correspondence received December 3, 2009, Mr. Bourn requested a continuance of the prehearing telephone conference due to his attorney's conflicting court date. On December 8, 2009, Administrative Law Judge Barbara L. Neilson granted that request.

THEREFORE, NOTICE IS HEREBY GIVEN that this matter has been assigned to a panel of three Administrative Law Judges for an evidentiary hearing. The assigned Administrative Law Judges are: Barbara L. Neilson (presiding judge), Beverly Jones Heydinger, and William R. Johnson. The address of the Administrative Law Judges is 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620. The Administrative Law Judges may be reached at telephone number 651-361-7900 and the Office's fax number is 651-361-7936.

IT IS FURTHER ORDERED AND NOTICE IS HEREBY GIVEN that this matter is **rescheduled** for a prehearing conference to be held by telephone on **Tuesday, December 15, 2009 at 10:30 a.m.**, and an evidentiary hearing to be held at the Office of Administrative Hearings at 600 North Robert Street in St. Paul on **Wednesday, January 6, 2010, at 10:00 a.m.**

The prehearing conference will be conducted by call-in telephone conference. You must call: **1-866-762-1799** at that time. When the system asks for your numeric pass code, enter "**4769626**" on your phone and you will be

connected to the conference. At the prehearing conference, preliminary matters will be addressed such as identifying the issues to be resolved, the number of potential witnesses and exhibits, the dates for filing exhibits and witness lists, and determining whether the matter may be disposed of without an evidentiary hearing.

The evidentiary hearing has been ordered pursuant to the authority granted to the Chief Administrative Law Judge by Minn. Stat. § 211B.35, subd. 1. The hearing will be conducted pursuant to Minn. Stat. §§ 211B.35 and 211B.36. Information about the evidentiary hearing and copies of governing state statutes and rules may be obtained online at www.oah.state.mn.us and at www.revisor.leg.state.mn.us. The Office of Administrative Hearings conducts proceedings in accordance with the Minnesota Rules of Professional Conduct and the Professionalism Aspirations adopted by the Minnesota Supreme Court.

HEARING PROCEDURES

At the evidentiary hearing, all parties have the right to be represented by legal counsel, by themselves, or by a person of their choice if not otherwise prohibited as the unauthorized practice of law. In addition, the parties have the right to submit evidence, affidavits, documentation and argument for consideration by the Administrative Law Judges. The panel may consider any evidence and argument submitted until a hearing record is closed, or may continue a hearing to enable the parties to submit additional testimony. All hearings must be open to the public.

WITHDRAWAL OF COMPLAINT

At any time before an evidentiary hearing begins, a complainant may withdraw a complaint. After the evidentiary hearing begins, however, a complaint filed may only be withdrawn with the permission of the panel.

COSTS

If the panel determines the complaint is frivolous, it may order the complainant to pay the respondent's reasonable attorney fees and to pay the costs of the office in the proceeding in which the complaint was dismissed.

BURDEN OF PROOF

The burden of proving the allegations in the complaint is on the complainant. The standard of proof of a violation of section 211B.06, relating to false statements in paid political advertising or campaign material, is clear and convincing evidence. The standard of proof of any other violation of chapter 211A or 211B is a preponderance of the evidence.

DISPOSITION OF COMPLAINT

At the conclusion of the evidentiary hearing, the panel must determine whether the violation alleged in the complaint occurred and must make at least one of the following dispositions:

- (1) The panel may dismiss the complaint.
- (2) The panel may issue a reprimand.
- (3) The panel may find that a statement made in a paid advertisement or campaign material violated section 211B.06.
- (4) The panel may impose a civil penalty of up to \$5,000 for any violation of chapter 211A or 211B.
- (5) The panel may refer the complaint to the appropriate county attorney.

The panel must dispose of the complaint within 14 days after the hearing record closes, when an expedited probable cause hearing was not required by section 211B.33.

JUDICIAL REVIEW

A party aggrieved by a final decision on a complaint filed under section 211B.32 is entitled to judicial review of the decision as provided in Minn. Stat. §§ 14.63 to 14.69.

REASONABLE ACCOMMODATION

Any party who needs an accommodation for a disability in order to participate in this hearing process may request one. Examples of reasonable accommodations include wheelchair accessibility, an interpreter, or Braille or large-print materials. If any party requires an interpreter, the Office of Administrative Hearings must be promptly notified. To arrange an accommodation, contact the Office of Administrative Hearings at 600 North Robert Street, P.O. Box 64620, St. Paul, Minnesota 55164-0620, or call 651-361-7900 (voice) or 651-361-7878 (TTY).

Dated this 8th day of December 2009.

s/Raymond R. Krause

RAYMOND R. KRAUSE
Chief Administrative Law Judge

cc: Judge Barbara L. Neilson
Judge Beverly Jones Heydinger
Judge William R. Johnson
Diane Nordstrom, Docket Clerk